IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JERYME MORGAN	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	**Case No. 13-cv-0881 -SCW**
MINH SCHOTT, and	)	
TIMOTHY VEATH	)	
	)	
	)	
Defendants.	)	
	)	

MEMORANDUM AND ORDER

WILLIAMS, Magistrate Judge:

Introduction and Procedural History

Plaintiff brought an action for violations of his constitutional rights pursuant to 42 U.S.C. § 1983 that occurred at Menard Correctional Center on February 21, 2013, and that action was captioned as cause No. 13-182. On May 9, 2013, Plaintiff filed a motion to amend his complaint in that case. The Court found that he stated several claims, but also determined that those claims could not proceed together pursuant to *George v. Smith*, 507 F.3d 605 (7th Cir. 2007). (Doc. 1). It split off Plaintiff's claim that he was retaliated against by Defendants into the present suit. (Doc. 1). Specifically, Plaintiff claimed that Maynard wrote a false disciplinary ticket and that Schott and Veath refused to call Plaintiff's witnesses at the disciplinary hearing in retaliation for a grievance Plaintiff filed on January 25, 2012. (Doc. 1). On August 3, 2015, Plaintiff filed a motion alleging that his original complaint had clearly stated a due process claim against Defendants Schott and Veath for failure to call a witness at his disciplinary hearing, and that this claim had been overlooked on § 1915A review. (Doc. 46). Examination of Plaintiff's original complaint proved him correct, and the Court allowed that claim to proceed. (Doc. 50). Defendants filed an answer to that claim on August 21, 2015. (Doc. 51).

The Court dismissed Plaintiff's claims of retaliation and Maynard in response to an earlier-filed motion for summary judgment. (Doc. 63). However, due to the confusion regarding what claims Plaintiff had stated, the Court permitted Defendants Schott and Veath to file a supplemental motion for summary judgment on whether Plaintiff's due process claim was bared by *Heck v. Humphrey*, 512 U.S. 477 (1994). Defendants filed that motion on February 10, 2016. (Doc. 76). The Court then appointed Plaintiff counsel for the purpose of responding, and if necessary, trying the case. (Doc. 79). Plaintiff filed his response after several extensions on May 2, 2016. (Doc. 96). He was granted leave to file a late affidavit, which he did on May 9, 2016. (Doc. 97). On May 13, 2016, the Court held hearing on the motion. The following is a summary of that ruling.

Summary Judgment Standard

Summary judgment is proper only if the admissible evidence considered as a whole shows there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. ***Dynegy Mktg. & Trade v. Multiut Corp.*, 648 F.3d 506, 517 (7th Cir. 2011) (citing Fed. R. Civ. P. 56(a)).** The party seeking summary judgment bears the initial burden of demonstrating—based on the pleadings, affidavits and/or information obtained via discovery—the lack of any genuine issue of material fact. ***Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).** In determining whether a genuine issue of material fact exists, the Court must view the record in a light most favorable to the nonmoving party. ***Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).**

At summary judgment, the Court's role is not to evaluate the weight of the evidence, to judge witness credibility, or to determine the truth of the matter, but rather to determine whether a genuine issue of triable fact exists. ***Nat'l Athletic Sportswear, Inc. v. Westfield Ins. Co.*, 528 F.3d 508, 512 (7th Cir. 2008)**.

Factual Background

Plaintiff was incarcerated at Menard from November 2009 until roughly February 2012. (Doc. 48-1, p. 16). He returned to Menard in May 2014 and is currently incarcerated there. (Doc. 48-1, p. 16).

A disciplinary ticket was issued to Plaintiff following an investigation into an assault against two inmates that occurred on the East Yard at Menard and was perpetrated by members of the Latin Folk constellation of gangs. (Doc. 48-2, p. 1). Plaintiff was identified as participating in the assault. (Doc. 48-2, p. 1). Plaintiff was charged with violated assaulted of any person, dangerous contraband, dangerous disturbances, impeding or interfering with an investigation, and gang or other unauthorized activity. (Doc. 48-2, p. 4). Ultimately, after Plaintiff appealed to the ARB, the claim about not cooperating with the investigation was stricken because no reviewing officer signed the disciplinary report. (Doc. 2, p. 8). The ARB also stuck the claim regarding possession of contraband as unsubstantiated. (Doc. 2, p. 8). As a result of the disciplinary report, Plaintiff was sentenced to 1 year C grade, 1 year segregation, 3 months loss of good time credit, 1 year commissary restriction, 3 months yard restriction, and 6 months contact visits restriction. (Doc. 48-2, p. 5).

Plaintiff believes that he was not given due process pursuant to DR-504 procedures because the administrative rules and regulations permit exonerating evidence to be presented at a disciplinary hearing. (Doc. 48-1, p. 22-23). Plaintiff requested that James Lewis be called as a witness. (Doc. 48-1, p. 23) (Doc. 48-2, p. 1). He put the name of his witness on the white copy of the ticket and confirmed that it made it through all of the carbon copies. (Doc. 48-1, p. 23) (Doc. 48-2, p. 1). Plaintiff's witness was not called at the hearing, and the paperwork incorrectly states that he did not request any witnesses. (Doc. 48-1, p. 23) (Doc. 48-2, p. 4). Plaintiff believes that the IDOC could have located James Lewis and that the adjustment committee made no effort to do so. (Doc. 48-1, p. 37). Plaintiff testified that James Lewis was at Menard at the time he wanted to call him. (Doc. 48-1, p. 43). The IDOC website currently lists 10 inmates in custody with the name James Lewis. When the ARB investigated this claim, it found no inmate by that name at Menard. (Doc. 2, p. 9). Plaintiff concedes that he did not have an ID number for James Lewis. (Doc. 48-1, p. 36) (Doc. 48-2, p. 1).

Plaintiff submitted an affidavit that his due process claim does not challenge the sanctions that arise from the January 31, 2012 Prison Adjustment Committee hearing that affect the duration of his confinement. (Doc. 97, p. 3). Rather, Plaintiff is only challenging the sanctions that affect his conditions of confinement, namely the C-grade status, one year segregation, one year commissary restriction, three months yard restriction, and six months contact visit restriction. (Doc. 97, p. 2-3). Plaintiff is not challenging the loss of his good time credit. (Doc. 97, p. 3). He further waived any right he had to challenge the loss of his good time credit. (Doc. 97, p. 3).

Analysis

The Court finds that there is a *Heck* bar to Plaintiff's claims. ***Heck v. Humphrey*, 512 U.S. 477 (1994).** In *Heck*, the Supreme Court stated that a prisoner's § 1983 is not cognizable if "a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." ***Heck*, 512 U.S. at 487.** Thus, a prisoner's claim for damages is barred unless the prisoner can demonstrate the conviction or sentence has previously been invalidated. The Supreme Court extended the *Heck* doctrine to civil rights claims arising out of prison disciplinary hearings. ***Burd v. Sessler*, 702 F.3d 429, 434 (7th Cir. 2012) (citing *Edwards v. Balisok*, 520 U.S. 641, 648 (1997) ("[R]espondent's claim[s] . . . that necessarily imply the invalidity of the punishment imposed, [are] not cognizable under § 1983.").**

Plaintiff's affidavit that he waives any claim for recovery of his good time credit is not sufficient to dodge the issue in the Seventh Circuit. Although the Second Circuit has recognized that right, it is the only Circuit to explicitly to so. ***See Peralta v. Vasquez*, 467 F.3d 98, 104 (2d Cir. 2006)("[A] prisoner subject to such mixed sanctions can proceed separately, under § 1983, with a challenge to the sanctions affecting his conditions of confinement without satisfying the favorable termination rule, . . . only . . . if he is willing to forgo once and for all any challenge to any sanctions that affect**

the duration of his confinement.") (emphasis in original omitted). While Plaintiff has also cited to *Brownlee v. Murphy*, a Ninth Circuit opinion, the Court notes that opinion was never published and has not been extensively cited to by other cases in the Ninth Circuit. **231 F. App'x 642 (9th Cir. 2007)**. Neither of the precedents cited by Plaintiff are controlling here.

Plaintiff's challenge to the procedures that kept him from calling his witness necessarily implies a challenge to the finding imposing the discipline. In *Tolliver v. City of Chicago*, the Seventh Circuit has held that a plaintiff cannot present a version of facts in a civil suit that implies that a conviction is invalid, even if the plaintiff is not seeking relief for the invalid conviction. **---F.3d---, 2016 WL 1425865 at *4 (7th Cir. April 12, 2016)**. Nor is a disclaimer sufficient to surmount this hurdle. ***Okoro v. Callahan*, 324 F.3d 488, 490 (7th Cir. 2003) ("It is irrelevant that [plaintiff] disclaims any intention of challenging his conviction.")** Here, Plaintiff's claim that his witness was not called in violation of his due process rights calls into question the validity of the prison discipline, because to accept that claim necessarily implies that the discipline was somehow invalid. ***Okoro*, 324 F.3d at 490 (finding that it was irrelevant that there was a hypothetical scenario that accommodated both the conviction and plaintiff's factual situation where the plaintiff insisted on a version of events that cast the conviction into doubt)**. This case is no different than *Tolliver* and *Okoro*, which are binding precedent in this circuit. The remaining claims in this case are *Heck* barred.

Conclusion

For the foregoing reasons, summary judgment is **GRANTED,** and Plaintiff's due process claim against Schott, and Veath is **DISMISSED with prejudice**. (Doc. 76). As this disposes of all remaining claims, the Clerk of Court is directed to enter judgment in Defendants' favor and close the case.

IT IS SO ORDERED.

DATED: May 16, 2016

/s/ Stephen C. Williams
STEPHEN C. WILLIAMS
United States Magistrate Judge